

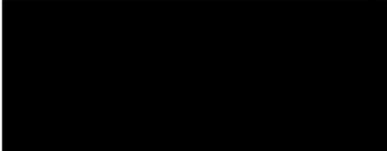


DA

U.S. Department of Justice

Immigration and Naturalization Service

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**



OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: WAC-01-060-52823 Office: California Service Center

Date: OCT 10 2002

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

**PUBLIC COPY**

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a "complementary medicine" business involved in the research and development of skin-care products. It has six employees and a stated gross annual income of \$225,000. It seeks to employ the beneficiary as a project manager for a period of two years and six and one-half months. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a statement.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the petitioner failed to establish that the performance of the proffered position's duties required at least a four-year baccalaureate degree in a specific field of study. On appeal, the petitioner asserts that the title of the offered job had been mistakenly labeled as a project director. The petitioner indicates that the proffered position is "Director for South America," and this position will include overseeing a sales, advertising, marketing, and public relations team in South America. The petitioner contends that the offered position is a specialty occupation because it requires a well-educated individual with a grasp of the South American business environments, culture and customs, language, strong roots, numerous contacts and personal relationships.

The petitioner's statements on appeal are not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner offered a description of the duties of the offered position that can be paraphrased as follows:

Review proposals from the Director of Products; Establish a work plan and complete staffing assignments; Coordinate the activities and modify schedules; Provide technical advice and resolve work related problems; Handle general administrative tasks while overseeing sales and marketing performance.

In addition, the record indicates that the petitioner also included a separate letter with the I-129 petition that contained the following description of the proffered position:

- 1- Review proposals from the Director of Product Development to plan time frame, funding, procedures, staffing requirements, and available resources[.]
- 2- Establish a work plan and complete staffing assignments to include description of duties responsibilities, and scope of authority for each assignment[.]
- 3- Coordinate the activities and modify schedules as needed to reach goals[.]
- 4- Provide technical advice and resolve work related problems[.]
- 5- Handle general administrative tasks while overseeing sales and marketing performance[.]

Pursuant to 8 C.F.R. 214.2(h) (4) (iii) (A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to be that of a top executive such as a general manager for the petitioner's South American operations. A review of the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 86-89, finds no requirement of a baccalaureate or higher degree in a specialized area for employment in a top executive position such as a general manager. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background. The Handbook also indicates that in smaller organizations, such as independent retail stores or small manufacturers, a partner, owner, or general manager often is responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties such as overseeing sales and marketing performance. Thus, the petitioner has not shown that a bachelor's degree in a specialized area or its equivalent is required for the position being offered to the beneficiary.

The petitioner has not submitted any evidence to establish that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position.

The petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions.

The petitioner's contention that the proffered position is a specialty occupation because it requires a well-educated individual with a grasp of the South American business environments, culture and customs, language, strong roots, numerous contacts and personal relationships is not persuasive. The petitioner appears to place as much value and emphasis on the beneficiary's ability to speak and write fluent Spanish in order to conduct business in South American countries as it places on her degree or employment experience. Therefore, the petitioner cannot be considered to have demonstrated that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specialized area.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the

offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.